

### Remarks

Claims 1-36 are at issue. Claims 1-36 stand rejected under 35 USC 103 (a) as being unpatentable over Dutta et al (2002/0073204) in view of Feigenbaum (6,339,785).

### Response to Arguments

The Examiner states the applicants are "interpreting the claims narrow using the specification". This is incorrect. The Examiner has completely ignored the meaning of the phrase "plurality downloading systems" in the claims. System means a group of elements to perform a unified function. Plurality means many. The goal of the system is to download a file from a peer-to-peer network. Feigenbaum only describes a single downloading system. Different servers cannot be interpreted by the Examiner as "downloading systems" because this is inconsistent with the specification. The applicant is allowed to be his own lexicographer, see *ZMI Corp v. Cardiac Resuscitator Corp.* 844 F.2d 1576, 6 USPQ2d 1557, 1560. This interpretation is also inconsistent with the claims. For instance, in claim 1 the method first selects at least one server (step c) and then selects one of a plurality of downloading system (step d). Why select a server and a downloading system if you are interpreting them to be the same thing? The Examiner has to find each element and connection in the claims. If the Examiner defines different servers as different downloading systems then he cannot find step c of claim 1. The PTO is allowed to select the broadest reasonable interpretation of the claims in light of the specification. But it is not allowed to ignore the specification or prohibit the applicant from being his own lexicographer. All the claims are clearly allowable over the prior art cited by the Examiner.

Claim 1 step (d) requires a plurality of downloading systems. The specification defines three downloading schemes: 1) multiple concatenated, 2) multiple concurrent and 3) serial concatenated (See FIGs. 3, 4, 5). Feigenbaum only describes a single downloading system (Col. 2, lines 60-67). Step (d) also requires selecting one of these downloading systems. Feigenbaum cannot select a download system since it only

describes a single downloading system. Dutta describes a peer-to-peer system that uses a "thumbnail" to determine if a particular node is of interest to a user, specifically for searching. The combination of Dutta and Feigenbaum does not describe or suggest "selecting between a plurality of downloading systems". Claim 1 is allowable.

Claim 2 requires that the downloading system be the multiple concurrent downloading system. This type of downloading system is shown in FIG. 4 of the present application. Feigenbaum does not teach multiple concurrent downloading. Multiple concurrent downloading has two or more downloading sessions operating simultaneously that are attempting to download the whole file. Once one of the sessions has downloaded the whole file, the other session is terminated. In Feigenbaum, he describes a system for simultaneously downloading a first portion of a file from a first node, a second portion of the file from a second node and then combining the first portion and second portion to create the complete file. This is clearly different than the "multiple concurrent downloading" system described in the present invention. Claim 2 is allowable.

Claims 3, 5, 7, 9 & 11-14 are allowable as being dependent upon an allowable base claim.

Claim 4 requires that the downloading system be the serial concatenated downloading system. This type of downloading system is shown in FIG. 3 of the present application. Feigenbaum does not teach serial concatenated downloading. Serial concatenated downloading starts a download from a first node and then if an error occurs a second node starts downloading at the point the error occurred. The two or more portions are then combined to form the whole file. In Feigenbaum, he describes a system for simultaneously downloading a first portion of a file from a first node, a second portion of the file from a second node and then combining the first portion and second portion to create the complete file. This is clearly different than the "serial concatenated downloading" system described in the present invention. Claim 4 is allowable.

Claim 6 requires comparing the connection speed to the available bandwidth. The Examiner points to Dutta. But Dutta is concerned with dropping connections to speed up a search. So the comparison has nothing to do with downloading. Claim 6 is allowable.

Claim 8 requires a unique key be entered as part of a search. The Examiner points to Dutta paragraph 41. However, a close reading of this paragraph shows that the unique is returned as part of the search, it is not entered as part of a search. Claim 8 is allowable.

Claim 10 requires a central server receiving a search query. Dutta states at paragraph 46 that the peer-to-peer system “operates without a central server.” Claim 10 is allowable.

Claim 15 step (e) requires a plurality of downloading systems. The specification defines three downloading schemes: 1) multiple concatenated, 2) multiple concurrent and 3) serial concatenated (See FIGs. 3, 4, 5). Feigenbaum only describes a single downloading system (Col. 2, lines 60-67). Step (e) also requires selecting one of these downloading systems. Feigenbaum cannot select a download system since it only describes a single downloading system. Dutta describes a peer-to-peer system that uses a “thumbnail” to determine if a particular node is of interest to a user, specifically for searching. The combination of Dutta and Feigenbaum does not describe or suggest “selecting between a plurality of downloading systems”. Claim 15 is allowable.

Claims 17, 21, 24 are allowable as being dependent upon an allowable base claim.

Claim 18 requires comparing the connection speed to the available bandwidth. The Examiner points to Dutta. But Dutta is concerned with dropping connections to speed up a search. So the comparison has nothing to do with downloading. Claim 18 is allowable.

Claim 19 requires determining if the available bandwidth is less than a connection speed. The section the Examiner points to Feigenbaum never discuss comparing the bandwidth and the connection speed. Claim 19 is allowable.

Claim 20 requires the multiple concurrent download system. This type of downloading system is shown in FIG. 4 of the present application. Feigenbaum does not teach multiple concurrent downloading. Multiple concurrent downloading has two or more downloading sessions operating simultaneously that are attempting to download the whole file. Once one of the sessions has downloaded the whole file, the other session is terminated. In Feigenbaum, he describes a system for simultaneously

downloading a first portion of a file from a first node, a second portion of the file from a second node and then combining the first portion and second portion to create the complete file. This is clearly different than the “multiple concurrent downloading” system described in the present invention. Claim 20 is allowable.

Claim 22 requires if a first server is interrupted during a download, selecting a second server to start downloading where the first server was interrupted. This type of downloading system is shown in FIG. 3 of the present application. Feigenbaum does not teach serial concatenated downloading. Serial concatenated downloading starts a download from a first node and then if an error occurs a second node starts downloading at the point the error occurred. The two or more portions are then combined to form the whole file. In Feigenbaum, he describes a system for simultaneously downloading a first portion of a file from a first node, a second portion of the file from a second node and then combining the first portion and second portion to create the complete file. This is clearly different than the “serial concatenated downloading” system described in the present invention. Claim 22 is allowable.

Claim 23 requires two or more servers start downloading the whole file simultaneously. This type of downloading system is shown in FIG. 4 of the present application. Feigenbaum does not teach multiple concurrent downloading. Multiple concurrent downloading has two or more downloading sessions operating simultaneously that are attempting to download the whole file. Once one of the sessions has downloaded the whole file, the other session is terminated. In Feigenbaum, he describes a system for simultaneously downloading a first portion of a file from a first node, a second portion of the file from a second node and then combining the first portion and second portion to create the complete file. This is clearly different than the “multiple concurrent downloading” system described in the present invention. Claim 23 is allowable.

Claim 25 step (c) requires a plurality of downloading systems. The specification defines three downloading schemes: 1) multiple concatenated, 2) multiple concurrent and 3) serial concatenated (See FIGs. 3, 4, 5). Feigenbaum only describes a single downloading system (Col. 2, lines 60-67). Step (d) also requires selecting one of these downloading systems. Feigenbaum cannot select a download system since it only

describes a single downloading system. Dutta describes a peer-to-peer system that uses a "thumbnail" to determine if a particular node is of interest to a user, specifically for searching. The combination of Dutta and Feigenbaum does not describe or suggest "selecting between a plurality of downloading systems". Claim 25 is allowable.

Claim 26 is allowable as being dependent upon an allowable base claim.

Claim 27 requires receiving a test file. The Examiner points to Dutta paragraph 0050. This paragraph discusses a 'Remove' button. Claim 27 is allowable.

Claim 28 requires determining an order of response from the servers. The Examiner points to Feigenbaum Col. 3, lines 42-52. While this section discusses response times this is not the same thing as the order of response. Claim 28 is allowable.

Claims 29 & 33-35 are allowable as being dependent upon an allowable base claim.

Claim 30 requires comparing the bandwidth to the connection speed. The Examiner points to Feigenbaum. However, Feigenbaum never teaches comparing the bandwidth to the connection speed. Claim 29 is allowable.

Claim 31 requires if a first server is interrupted during a download, selecting a second server to start downloading where the first server was interrupted. This type of downloading system is shown in FIG. 3 of the present application. Feigenbaum does not teach serial concatenated downloading. Serial concatenated downloading starts a download from a first node and then if an error occurs a second node starts downloading at the point the error occurred. The two or more portions are then combined to form the whole file. In Feigenbaum, he describes a system for simultaneously downloading a first portion of a file from a first node, a second portion of the file from a second node and then combining the first portion and second portion to create the complete file. This is clearly different than the "serial concatenated downloading" system described in the present invention. Claim 31 is allowable.

Claim 32 requires two or more servers start downloading the whole file simultaneously. This type of downloading system is shown in FIG. 4 of the present application. Feigenbaum does not teach multiple concurrent downloading. Multiple concurrent downloading has two or more downloading sessions operating simultaneously that are attempting to download the whole file. Once one of the

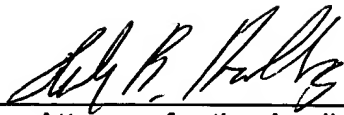
sessions has downloaded the whole file, the other session is terminated. In Feigenbaum, he describes a system for simultaneously downloading a first portion of a file from a first node, a second portion of the file from a second node and then combining the first portion and second portion to create the complete file. This is clearly different than the "multiple concurrent downloading" system described in the present invention. Claim 32 is allowable.

Claim 36 requires comparing the bandwidth to the connection speed. The Examiner points to Feigenbaum. However, Feigenbaum never teaches comparing the bandwidth to the connection speed. Claim 36 is allowable.

The application is now in condition for allowance.

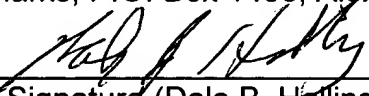
Respectfully submitted,

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I hereby certify that a Response is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450, on:

9/26/05  
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Signature (Dale B. Halling)